IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.Nos.668 to 675 of 2001

M/s.Haryana State Co-operative
Supply and Marketing Federation Ltd.,
No.20, Huzur Road,
Coimbatore by its power of
attorney holder
Devinder Kumar
S/o.Kishorilal .. Appellant in Crl.A.No.668 to 675 of 2001

Vs.

1.Shree Olive Fabrice,
A partnership Firms,
rep. by its Partner A.Ravi,
No.22, 4th lay-out,
Coimbatore-1.

2.A.Ravi ..Respondents in Crl.A.No.668, 670 & 671 of 2001

1.M/s.Gitangali Mills Ltd.,
by Director P.R.Ramasubramaniam,
Sri.Gomathipuram-post,
Post Box No.6,
Sankarankoil-627 756,
Tirunelveli Kattabomman Dist.

2.P.R.Ramsubramaniam,
Director,
Sri.Gomathipuram-post,
Post Box No.6,
Sankarankoil-627 756,
Tirunelveli Kattabomman Dist. .. Respondents in Crl.As.669 & 672 to 675 of 2001

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Prayer:- These appeals have been preferred against the judgment dated 24.4.2001, 7.5.2001, 24.4.2001, 24.4.2001, 7.5.2001, 7.5.2001 & 7.5.2001 made in STC.No.1378/95 & C.C.Nos.1410, 1414, 1421, 1424, 1425, 1426 & 1427 of 1995 respectively on the file of the Judicial Magistrate No.V, Coimbatore.

For Appellants :Mr.N.Ishtiaq Ahmed
(Crl.A.No.668 to 675 of 2001)

For Respondents :Mr.V.Sairam
(Crl.A.No.668, 670 & 671/2001)
In other appeals no one represented the respondents

COMMON JUDGMENT

The complainant in STC.No.1378/95 & C.C.Nos.1410, 1414, 1421, 1424, 1425, 1426 & 1427 of 1995 on the file of the Judicial Magistrate No.V, Coimbatore, is the appellant in all the above appeals. The complainant has preferred the private complaint in all the above cases under Section 200 of Cr.P.C., for an offence under Section 138 of the Negotiable Instruments Act against the accused.

2.Admittedly in the business transaction in connection with cotton bales a sum of Rs.26,99,995/- is due from the respondents in STC.No.1378/95 & C.C.No.1414 & 1421/95 and the respondents in C.C.Nos.1410, 1424 to 1427 of 1995 owes a sum of Rs.29,18,241 to the complainant.

3.On appearance of the accused, the learned trial judge has furnished copies under Section 207 of Cr.P.C., and when the charges were framed and questioned the accused pleaded not guilty. P.W.1 & P.W.2 were examined and Ex.P.1 to Ex.P.7 were marked on the side of the complainant in C.C.No.1421 & 1414/95 & STC.No.1378/95. P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.10 were marked on the side of the complainant in C.C.No.1410/1995. P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.11 were marked on the side of the complainant in C.C.No.1424 to 1427 of 1995.

4.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused would deny their complicity with the crime in all the above cases. In STC.No.1378/95 & C.C.Nos.1414 & 1421 of 1995 A2-Ravi examined himself as D.W.1 and has marked Ex.D.1 to Ex.D.10 in all the above said three cases. In C.C.No.1410/95 Ex.D.1 and Ex.D.2 were marked. In C.C.No.1427/95 Ex.D.1 to Ex.D.2 were marked. In C.C.No.1424 to 1426/95 Ex.D.1 to Ex.D.3 were marked. After going through the available evidence both oral and documentary meticulously, the learned Trial Judge has come to the conclusion that an offence under Section 138 of the Negotiable Instruments Act is not attracted against the accused to warrant conviction and accordingly dismissed all the above said STC & CC cases, which necessitated the complainant to prefer these appeals.

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5.Now the point for determination in this appeal is whether the judgment of the trial Court is perverse in nature or full of manifest error to warrant any interference from this Court?

6.Heard Mr.N.Ishtiaq Ahmed appearing for the appellant and Mr.V.Sairam appearing for the respondent in Crl.A.No.668, 670 & 671/2001 and considered their respective submissions.

7.The Point:- 7(a) The first ground on which the learned trial judge has dismissed the complaint is that the power of attorney holder for P.W.1 in all the above cases viz. Devendra Kumar is not competent to represent P.W.1 and that the deed of power of attorney, on which reliance is placed by P.W.1-Devendra Kumar, is that Ex.P.10-power of attorney in STC.No.1378/95 & C.C.Nos.1414 & 1421 of 1995 and Ex.P.9 in C.C.Nos.1410, 1424, 1425, 1426, 1427 of 1995 are executed by the Managing Director of M/s.Haryana State Co-operative Supply and Marketing Federation Ltd., and he is not competent to execute general power of attorney in favour of Devendra Kumar, P.W.1, in all the cases. At request by this Court Mr.N.Ishtiaq Ahmed has produced a judgment of this Court in Crl.A.No.348 & 410 of 2001 dated 18.6.2001, wherein this Court has held in a similar situation, the complaint filed by the same complainant through power of attorney holder Devendra Kumar against different accused, the power of attorney deed produced by Devendra Kumar in those cases was rejected by this Court on the ground that the Managing Director is not competent to execute the power of attorney under Rule 27(xvii) of the Bye-law of the complainant's company, unless the Board of Directors by way of resolution authorised the Managing Director to relegate to some one his power conferred under Rule 27(xvii) of the Bye-laws, the power of attorney holder Devendra Kumar is not competent to file the complaint on behalf of the complainant viz. M/s.Haryana State Co-operative Supply and Marketing Federation Ltd., Coimbatore. The Bye-laws of the complainant was filed as Ex.D.1. But here, in these cases, the bye-laws of the complainant was not produced. Even then it is admitted that the complainant in C.A.No.348 & 410 of 2001 is the complainant in all the above cases. So I am of the view that since Board of Directors have not authorised the Managing Director who has executed the power of attorney in favour of Devendra Kumar, on which the reliance is placed by Devendra Kumar is not competent to file the complaint on behalf of the complainant. The above said power of attorney deed in each of the above said STC & CC cases will not empower him to file the complaints on behalf of M/s.Haryana State Co-operative Supply and Marketing Federation Ltd., Coimbatore.

7(b) Next ground on which the learned trial judge has dismissed the complaints is that on the date of drawal of the respective chequs there was no subsisting liability on the accused in these cases to discharge the same. By way of rebuttal evidence the accused produced Ex.D.1 & Ex.D.2 in C.C.No.1410 &1427 of 1995 and Ex.D.1 to Ex.D.3 in C.C.Nos.1424 to 1426 of 1995 and Ex.D.1 to Ex.D.10 in STC.No.1378/95 & C.C.Nos.1414 & 1421 of 1995, to show that the amount due to the

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complainant in the business transaction entered into between the accused and the complainant were subsequently discharged by the accused in these cases and the impugned post-dated cheques were given only as a security and not for discharging any subsisting liability. I do not find any reasons to interfere with the findings of the learned trial Judge, which is neither illegal nor infirm to warrant any interference from this Court. Point is answered accordingly.

8.In fine the appeals are dismissed confirming the judgment of the trial Court in STC.No.1378/95 & C.C.Nos.1410, 1414, 1421, 1424, 1425, 1426 & 1427 of 1995 respectively on the file of the Judicial Magistrate No.V, Coimbatore.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssv

To,

1.The Judicial Magistrate No.V,
Coimbatore.

2.-do-Through The Chief Judicial Magistrate,
Coimbatore District.

+ 8 cc to Mr.N.Ishtiaq Ahmed Advocate SR.NO.48112
+ 1 cc to Mr.V.Sairam Advocate SR.NO.48286

SSV (CO)
RD 20.8.07

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